

**KENTUCKY PERSONNEL BOARD
MINUTES OF DECEMBER 14, 2007**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Greg Higgins, on December 14, 2007, at approximately 9:30 a.m., 5 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Greg Higgins, Chairman
Christine J. Goodmann, Vice-Chairman
Betty Gibson, Member
Lisa T. Hendricks, Member
Rosemary F. Center, Member
Jackson M. Andrews, Member
Robert B. Frazer, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

2. **READING OF THE MINUTES OF REGULAR MEETING HELD NOVEMBER 9, 2007**

The minutes of the last Board meeting had been circulated among the members previously. Chairman Higgins asked for additions or corrections. Ms. Gibson moved to approve the minutes as submitted, Mr. Andrews seconded, and the motion carried 6-0 (Chairman Higgins does not vote unless noted). The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek stated that the Personnel Board is still considering moving to 1 Fountain Place. The cost of moving is one of the key issues as to whether the Board will move or not.

Mr. Sipek informed the members that there are several candidates being considered for the part-time attorney position. However, he will have more to report at the next Board meeting.

Mr. Sipek stated that Westlaw is interested in publishing Personnel Board decisions. ICON is currently scanning all the Board's decisions (1980 and forward) onto disks.

Mr. Sipek advised that the Board received two decisions from the Franklin Circuit Court as follows:

1. Personnel Board v. Health and Family Services & Lowell Workman, 07-CI-1556

In response to the Board's Motion for Relief, Judge Wingate entered a strong order that Health and Family Services conduct another selection process and fill the position in the Milk Safety Branch. Workman's counsel filed a motion with the Court asking that the Agency place him (Workman) directly in the position, to which the Agency has filed a response.

2. Finance Cabinet v. David Waller & Personnel Board, 07-CI-1672

The Agency filed a motion in Franklin Circuit Court to stop the proceedings, as the appeal stemmed from a written reprimand. However, Judge Wingate, in his Order, refused to do that, stating that the administrative process should go forward (citing one of Mr. Crocker's Executive Branch Ethics Commission cases). The Agency then filed a motion with the Court of Appeals to prevent the evidentiary hearing that is scheduled in January 2008, which is pending a decision.

The last item Mr. Sipek wanted to discuss with the Board members was setting a schedule for the 2008 Board meetings. Mr. Crocker reported that he has returned to the U.S. Navy and some of his drill weekends are on the second Friday of the month. Also, CLE training on KRS Chapter 13B is scheduled on the second Friday in May. Mr. Frazer requested that the meetings be held on either a Monday or a Friday. Mr. Andrews stated that he would have a problem with the second Friday in February. After further discussion it was agreed to have the Board meetings every second Friday except for the months of February, May, July and September.

Ms. Hendricks moved that the Board meet on the second Friday of each month in 2008, with the exception of February, May, July and September, when the Board will meet on the third Friday of each month. Ms. Gibson seconded and the motion carried 6-0.

At the conclusion of Mr. Sipek's report, Chairman Higgins asked if there were any questions. With no questions presented, he asked for the Personnel Cabinet's report.

4. **PERSONNEL CABINET'S REPORT**

Ms. Dinah Bevington, Staff Attorney, was present for the Personnel Cabinet and reported the following:

Ms. Bevington advised that Mr. Tom Stephens regrets that he could not convey in person his appreciation to the Board, but shares the same sentiments that Secretary Crall conveyed at the last Board meeting.

Ms. Bevington stated that Secretary Nikki Jackson, and the Hon. Dan Egbers, Executive Director for Legal Services, will report to the Personnel Cabinet for work on Monday (December 17, 2007).

Ms. Bevington advised that since the Career Opportunities System (COS) went on-line (November 26, 2007), the Personnel Cabinet has received 4,730 applicants, 113 positions have been posted, and the first appointment has made it through the system. An average of 20 people a day (unaware about COS) have applied in person at the Personnel Cabinet, and those applicants were walked through the system. There have been a few complaints about the new system. One complaint is that applicants are annoyed at having to re-file an application; therefore, the Personnel Cabinet has been providing past applications or application updates, upon request. Other complaints relate to navigation issues. To alleviate that problem the Personnel Cabinet has provided a Help Desk for both applicants and agencies.

Ms. Bevington stated that the regulations that were approved by the Board are working their way through the system. The Summary Plan Description (SPD) will be effective January 1, 2008.

Upon conclusion of her report, Ms. Bevington asked if anyone had any questions. Mr. Crocker stated that there are still 400 names from the Oakwood layoffs on the re-employment register that need to be accounted for and he wanted to make sure they were accounted for in the new system.

5. **PETITIONED POSITION(S) - None**

6. **ORAL ARGUMENTS**

A. Brenda Hendrix v. Education Cabinet

Present were the Hon. Dan Egbers, counsel for the Appellee, who had requested oral arguments; and the Appellant, Brenda Hendrix, *pro se*. The parties answered questions from the Board.

B. Sandra Rudder v. Transportation Cabinet and Ruth Estep

Present were the Hon. Paul Fauri, counsel for the Appellant, who had requested oral arguments; the Hon. Paul Harnice, counsel for the Appellee; and Ruth Estep, Intervenor. The parties answered questions from the Board.

C. Edward Sobolewski v. Environmental and Public Protection Cabinet

Present were the Hon. J. R. Dobner, counsel for the Appellee, who had requested oral arguments; and the Appellant, Edward Sobolewski, *pro se*. The parties answered questions from the Board.

7. Requests for Investigation

Following oral arguments, Chairman Higgins advised that requests for investigations will be discussed out of agenda order, since the parties involved were waiting patiently. Mr. Sipek stated that new documents have been presented to the Board members concerning the Bates and Parker investigations and they have not had an opportunity to review them before the meeting.

a. Appointment of Michael Bates by the Office of the Treasurer

Present were the Hon. Rob Jones and Secretary Brian Crall. Mr. Jones advised that it was his last day as counsel for the Office of the Treasurer and that Diane Fleming would be taking his place. Secretary Crall stated that he was present unofficially to answer any questions, as he had tendered his resignation. Mr. Jones stated that a resolution may be worked out. Secretary Crall was not opposed to working out a resolution. The parties answered questions from the Board.

Mr. Andrews moved to defer this matter to the next meeting of the Board. Ms. Hendricks seconded and the motion carried 6-0.

b. 2004 Salary Adjustment of Rebecca Brooke Parker by the Office of the Treasurer

Present were the Hon. Rob Jones, Secretary Brian Crall, and the Hon. Dan Egbers. Mr. Jones stated that a resolution may be worked out. Neither Secretary Crall nor Mr. Egbers were opposed to working out a resolution. The parties answered questions from the Board.

Ms. Hendricks moved to defer this matter to the next meeting of the Board. Ms. Center seconded and the motion carried 6-0.

Chairman Higgins advised that by deferring these investigations it will give the new administration personnel time to review and/or come to a resolution. Further, that representatives from the Treasurer's office (Hon. Diane Fleming) and the Personnel Cabinet (Hon. Dan Egbers) should be invited to the January 2008 Board meeting.

c. Patton Database

Mr. Sipek advised that although there was nothing for the Board to vote on, he wanted to advise the Board members that the Patton Database investigation was on-going. Mr. Sipek stated that last Friday (December 7, 2007), he held an on-record meeting with Mr. Crocker,

Secretary Crall, Mr. Tom Stephens, Mr. Sam Hawkins, Inspector General of the Personnel Cabinet, and Steve O'Daniel, Investigator with the Inspector General's Office. He further advised that the Board recently received a detailed report and documents from the Personnel Cabinet concluding their investigation. He advised that there was no specific conclusion reached by the Personnel Cabinet, and that Secretary Crall was available to answer any questions. He stated that the Personnel Cabinet was way ahead of the Board in this investigation because of the Board's caseload and the priority of the Doerting investigation. However, the Cabinet's report and documents would be an important tool for the Board to utilize. Mr. Andrews asked what the status of the subpoena was for Mr. [David] Cooke (former Personnel Cabinet Director of Staffing Services). Mr. Jones advised that the Attorney General's office wanted to be present and the question is what role the Attorney General's office would play. Mr. Jones stated that a motion was now in front of Judge Rhorer for a decision. Secretary Crall stated that the Cabinet wanted to talk with Mr. Cooke regarding his knowledge and experience when employed with the Personnel Cabinet. However, since Mr. Cooke was also a consultant on the Doerting Investigation Database, the Attorney General felt there was a conflict of interest. Therefore, the resolution was to turn the investigation over to the Personnel Board.

8. CLOSED SESSION

Ms. Hendricks moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Ms. Gibson seconded. Chairman Higgins stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 6-0. (11:25 a.m.)

Ms. Hendricks moved to return to open session, Ms. Gibson seconded, and the motion carried 6-0. (1:10 p.m.)

9. **CASES TO BE DECIDED**

The Board reviewed the following cases. At that time, the Board considered the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Russell Bingham v. Transportation Cabinet (Deferred from November)

Mr. Frazer moved to note Appellant's exceptions, Appellee's response and oral arguments and to accept the Final Order as altered and attached to these minutes sustaining the appeal. Ms. Hendricks seconded and the motion carried 6-0.

B. Jennifer Gregory, Kelvin Elliott and Michael Kemper v. Cabinet for Health and Family Services (3 appeals) (Deferred from November)

Ms. Hendricks moved to note Appellee's exceptions and oral arguments and to accept the Final Order as altered and attached to these minutes sustaining the appeal. Mr. Andrews seconded and the motion carried 6-0.

C. Rick Quarles v. Transportation Cabinet (Deferred from November)

Ms. Hendricks moved to note Appellee's exceptions and oral arguments and to accept the Final Order as altered and attached to these minutes dismissing the appeal. Ms. Center seconded and the motion carried 4-0, with Ms. Gibson and Ms. Goodmann abstaining.

D. Brenda Hendrix v. Education Cabinet

Ms. Center moved to defer this matter to the next meeting of the Board. Ms. Gibson seconded and the motion carried 6-0.

E. Sandra Rudder v. Transportation Cabinet and Ruth Estep

Mr. Frazer moved to note Appellant's exceptions, Appellee's Response and oral arguments and to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 6-0.

F. Edward Sobolewski v. Environmental and Public Protection Cabinet

Mr. Frazer moved to note Appellee's exceptions and oral arguments and to accept the recommended order sustaining the appeal. Ms. Gibson seconded and the motion carried 5-1, with Ms. Hendricks opposing.

G. Rosemary Blackford v. Transportation Cabinet

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 6-0.

H. ~~Campbell, et al. v. Environmental and Public Protection Cabinet and Personnel~~
MOVED TO JANUARY AGENDA

I. ~~Robert Gaines v. Environmental and Public Protection Cabinet (Promotional dismissal; discrimination—appeal sustained)~~
(SETTLED AFTER ORDER; MOVED TO SETTLEMENTS)

J. Kenneth Hammonds v. Justice and Public Safety Cabinet

Ms. Gibson moved to accept the recommended order dismissing the appeal. Ms. Center seconded and the motion carried 6-0.

K. Jimmie Spratt v. Education Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 6-0.

10. **WITHDRAWALS**

Ms. Gibson moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Hendricks seconded and the motion carried 6-0.

- A. Daphne Bentley v. Justice and Public Safety Cabinet
- B. Michelle Braunstein v. Justice and Public Safety Cabinet
- C. Penny Collins v. Cabinet for Health and Family Services
- D. Corey Fields v. Justice and Public Safety Cabinet
- E. Felicia Fisher v. Personnel Cabinet
- F. Donald M. Kline v. Personnel Cabinet
- G. Brenda Lyen v. Personnel Cabinet
- H. James Montgomery v. Justice and Public Safety Cabinet
- I. Marsha Ramey v. Cabinet for Health and Family Services
- J. Shelia Rogers v. Education Cabinet
- K. Damon Scott v. Personnel Cabinet
- L. Barbara Shover v. Personnel Cabinet
- M. Troy Smith v. Cabinet for Health and Family Services
- N. Melissa Spears v. Personnel Cabinet
- O. Amanda Stamper v. Personnel Cabinet
- P. Michael Wisley v. Environmental and Public Protection Cabinet
- Q. David Slayton v. Transportation Cabinet

11. SETTLEMENTS

Ms. Center moved to consider the following settlements *en bloc* and to accept the settlements as submitted by the parties sustaining the appeals to the extent set forth in the settlements. Mr. Andrews seconded and the motion carried 6-0.

- A. Anita Hall v. Transportation
- B. Reed Hampton v. Transportation
- C. Rocky Haney v. Finance and Administration Cabinet
- D. Alice Holbert v. Commerce/Parks
- E. Phillip Johnson v. Transportation
- F. Michael Loran v. Environmental and Public Protection Cabinet
- G. Melanie McClish v. Department of Corrections
- H. Ricardo Moore v. Transportation
- J. Dianne Woolums v. Transportation
- I. Robert Gaines v. Environmental and Public Protection Cabinet

12. OTHER

Review of Regulation 101 KAR 1:325

Ms. Hendricks moved to accept 101 KAR 1:325 as amended. Mr. Frazer seconded and the motion carried 6-0.

Discussion of Proposed Legislation Change

Mr. Crocker mentioned that he and Mr. Andrews appeared before the Interim Joint Committee on November 11, 2007. The main focus was the proposed increase in the Board Member's per diem. Mr. Andrews did not believe they had enough time to explain in detail everything to the Joint Committee; however, he made the point that other Boards were paid more.

Mr. Andrews recommended that the housekeeping and substantive issues be kept separate. Another issue discussed was filing appeals to circuit court in the county where the Appellant resides. Mr. Crocker stated one concern would be certifying the records to different counties.

One misperception by the Joint Committee was that the Board favors the administration over merit employees.

Mr. Andrews hopes that in the future, the Board will have an opportunity to explain the Board's concerns to the Joint Committee in more detail.

There being no further business, Ms. Hendricks moved to adjourn. Ms. Gibson seconded, and the motion carried 6-0. (1:35 p.m.)

Greg Higgins, Chairman

Christine J. Goodmann, Vice-Chairman

Betty Gibson, Member

Lisa T. Hendricks, Member

Rosemary F. Center, Member

Jackson M. Andrews, Member

Robert B. Frazer, Member